

Supplemental Letter of Findings Number: 04-20110484
Use Tax
For the Years 2008-2010

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax–Leases.

Authority: IC § 6-2.5-1-21; IC § 6-2.5-5-8; IC § 6-8.1-5-1; [45 IAC 2.2-4-27](#).

Taxpayer protests the Department's assessment of use tax on a contract.

STATEMENT OF FACTS

Taxpayer is a medical practice in Indiana. As part of its medical practice, Taxpayer will periodically request imaging for its patients. Taxpayer entered into a contract with an unrelated third party ("Imaging Company") to provide imaging equipment and operators.

The Indiana Department of Revenue ("Department") audited Taxpayer and determined that the contract between Taxpayer and the Imaging Company constituted a lease of tangible personal property. The Department assessed use tax on Taxpayer's payments pursuant to the contract. Taxpayer protested the assessment.

The Department initially issued a Letter of Findings denying Taxpayer's protest in full. Taxpayer requested—and the Department granted—a rehearing, and from which this Supplemental Letter of Findings results. Additional facts will be supplied as necessary.

I. Use Tax–Leases.

DISCUSSION

Taxpayer protests the assessment of additional use tax on payments made pursuant to a contract with Imaging Company. The issue is whether the contract between Taxpayer and Imaging Company is a lease of tangible personal property.

IC § 6-8.1-5-1(c) states in relevant part, "[t]he notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

IC § 6-2.5-1-21 states:

(a) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. "Lease" or "rental" does not include:

(1) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(2) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1 [percent]) of the total required payments; or

(3) providing tangible personal property along with an operator for a fixed or indeterminate period, if:

(A) the operator is necessary for the equipment to perform as designed; and

(B) the operator does more than maintain, inspect, or set up the tangible personal property.

(b) "Lease" or "rental" includes agreements covering motor vehicles and trailers in which the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(1).

(c) The definition of "lease" or "rental" set forth in this section applies throughout this article, regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code ([IC 26-1](#)), or other provisions of federal, state, or local law.

(d) This section applies only to leases or rentals entered into after June 30, 2003, and has no retroactive effect on leases or rentals entered into before July 1, 2003. (Emphasis added).

The Department cited to [45 IAC 2.2-4-27](#)(d)(3)(A), which states:

The renting or leasing of tangible personal property, together with the services of an operator shall be subject to the tax when control of the property is exercised by the lessee. Control is exercised when the lessee has exclusive use of the property, and the lessee has the right to direct the manner of the use of the property. If these conditions are present, control is deemed to be exercised even though it is not actually exercised.

IC § 6-2.5-1-21 was enacted effective January 1, 2004. However, [45 IAC 2.2-4-27](#) was promulgated in 1982 and has not been revised or repealed.

On rehearing, Taxpayer asserts that the "lease" requires the provision of an operator. According to Taxpayer,

Taxpayer's personnel are not qualified to operate the machinery. Instead, Imaging Company's personnel operate the machinery. Taxpayer argues that the element of control over the operator under [45 IAC 2.2-4-27](#) is irrelevant to the analysis of IC § 6-2.5-1-21. As such, according to Taxpayer, the contractual requirement for Imaging Company to provide an operator—who "is necessary for the equipment to perform as designed" and who "does more than maintain, inspect, or set up the tangible personal property"—precludes the contract from being considered an otherwise taxable "lease" within the meaning of IC § 6-2.5-1-21.

In this particular case, Taxpayer has provided sufficient information that Imaging Company provided both equipment and operators who are "necessary for the equipment to perform as designed" and who do "more than maintain, inspect, or set up the tangible personal property" within the meaning of IC § 6-2.5-1-21. Therefore, the contract in question is not a "lease" as defined under IC § 6-2.5-1-21, and Taxpayer is sustained.

However, it is important to note that the addition of IC § 6-2.5-1-21 has a secondary impact. For lessors such as Imaging Company, who may have been exempt on tangible personal property purchases based partly on the exercise (or lack of exercise) of control as provided under [45 IAC 2.2-4-27](#), the exemption provided under IC § 6-2.5-5-8 no longer applies to property purchased for "lease" with an operator as provided under IC § 6-2.5-1-21(a)(3).

FINDING

Taxpayer's protest is sustained.

Posted: 11/28/2012 by Legislative Services Agency
An [html](#) version of this document.